

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 28 June 2024

Public Authority: London Borough of Islington
Address: Islington Town Hall
Upper Street
N1 2UD

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Islington (the Council) seeking information about the Barnsbury and Laycock Liveable Neighbourhood scheme. The Council provided the complainant with some information falling within the scope of the request. However it withheld some further information on the basis of regulation 12(4)(d) (material in the course of completion, unfinished documents and incomplete data) and some further information on the basis of regulation 12(4)(e) (internal communications) of the EIR.
2. The Commissioner's decision is that:
 - The information withheld on the basis of regulation 12(4)(d) is exempt from disclosure on the basis of this provision, but that in all the circumstances of the case the public interest favours disclosure of this information.
 - The information withheld on the basis of regulation 12(4)(e) is exempt from disclosure on the basis of this provision, and that in all the circumstances of the case the public interest favours withholding this information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.

- Provide the complainant with a copy of the information withheld on the basis of regulation 12(4)(d) of the EIR.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. This request which is the focus of this complaint concerns the Council's Barnsbury and Laycock Liveable Neighbourhood scheme.
6. During November 2022 to April 2023 the Council launched its phase 1 early engagement in order to gather local insight to inform designs via email, events and an interactive map.
7. As part of phase 2, May 2023 to October 2023, the Council used the feedback from phase 1 to inform high-level proposals (filter locations, cycleways, boundary roads and open routes, public realm, and other improvements). Specifically in September to October 2023 the Council again sought public views on the early high level proposals via online events, a survey and engagement events.
8. The next stage in the process involves holding a public consultation in late 2024 on the final designs before any decision is taken to implement the proposals.¹

Request and response

9. The complainant submitted the following request to the Council on 3 October 2023:
- "1. Dates of monthly meetings in 2023 between the Barnsbury Ward members and Offices of the Liveable neighbourhood scheme.
 - 2. Agendas for these meetings.
 - 3. Papers submitted to these meetings.
 - 4. Any decisions made at these meetings.
 - 5. Any minutes relating to these meetings.

¹ Background information taken from <https://www.islington.gov.uk/roads/people-friendly-streets/liveable-neighbourhoods/barnsbury-laycock>

6. All written and electronic messages, both internal and external regarding Barnbury Liveable Neighbourhood.
 7. Could I also have the same information for Laycock? i.e. points 1-6.”
10. The Council responded on 20 October 2023 as follows:
 - Question 1 - it provided the dates of the meetings.
 - Question 2 - it explained that the agendas were exempt from disclosure on the basis of regulation 12(4)(e) (internal communications) of the EIR.
 - Question 3 – it explained that the papers were exempt on the basis of regulations 12(4)(e) and 12(4)(d) (material that is still being completed, unfinished documents including drafts, or incomplete data)
 - Questions 4 and 5 – it explained that these were withheld on the basis of regulation 12(4)(e).
 - Question 6 – it refused this part of the request on the basis of regulation 12(4)(b) (manifestly unreasonable).
 - Question 7 – it explained that Laycock and Barnsbury Ward are one scheme.
 11. The complainant contacted the Council on 26 October 2023 and challenged its response to questions 2, 3, 4 and 5.
 12. The Council informed her of the outcome of internal review on 21 November 2023. This explained that:
 - It held minutes for all meetings with the exception of the meeting of 11 January 2023.
 - It only held agendas for some of the meetings.
 - The agendas and minutes it did hold were only partially exempt on the basis of regulation 12(4)(e).
 - No separate record was held of the decisions taken at the meetings; rather these were simply recorded in the minutes.
 - The papers submitted to the meetings were in the form of PowerPoint presentations, but these were only partially exempt on the basis of regulations 12(4)(d) and 12(4)(e).
 13. The Council explained to the complainant that she would be provided with the information which the internal review had concluded could be disclosed by 5 December 2023.
 14. There was a slight delay to this timeline, with the information in question being disclosed to her on 19 December 2023. The Council explained that the names and initials of officers below “PO10” had been also removed under regulation 13 (personal information).

Scope of the case

15. The complainant contacted the Commissioner on 31 December 2023 to complain about the Council's decision to withhold the remaining withheld falling within the scope of the request. During the course of the Commissioner's investigation, the Council explained that it had conducted a further review of the withheld information. The review established that:
- Some of the redacted information should have been disclosed, for example names of senior members of staff and some general statistical information.
 - In some cases, entire sections had been redacted where only part of the information was exempt.
 - That it had been five months since the original request had been received and therefore the exceptions may no longer apply.
16. As result the Council disclosed further, previously withheld information, to the complainant. However, it still sought to withhold information on the basis of regulations 12(4)(d) and 12(4)(e). In relation to the former exception this was on the basis that the Liverpool Road Origin Destination (OD) and Survey Phase 1 engagement results were still being used to inform the next stages. In relation to the latter exemption, this was applied to some sections of the minutes which included discussions between staff and councillors regarding the scheme where different options were explored.
17. The complainant confirmed to the Commissioner that she wished to contest the application of these exceptions to the remaining information, albeit she accepted that the names of junior officers could be redacted.

Reasons for decision

Regulation 12(4)(d) – Material in the course of completion, unfinished documents and incomplete data

18. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents, or to incomplete data. It is the first limb of this exception that the Council has sought to rely on in this case.
19. The exception is class-based, which means that it is engaged if the information in question falls within its scope. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception.

20. The Commissioner's guidance² sets out how the phrase 'material still in the course of completion' should be interpreted:
21. For this limb to be engaged, either the requested information itself must be still in the course of completion, or the requested information must 'relate to' material which is still in the course of completion.
22. With regard to 'material', this must have a physical existence; it cannot be something that does not physically exist, like a project, an exercise, or a process. An overarching project cannot engage the exception even if it is not complete, but each individual document may do if it has not yet been completed.
23. Finished or complete information that 'relates to' material in the course of completion may be covered by this limb of the exception. More specifically, the guidance explains that in order to rely on this aspect of the exception:

'You [ie a public authority] need to:

- identify the material that is actively being worked upon; and
- be able to explain why, and how, the information you wish to withhold relates to it; and
- consider whether the requested information is a separate and independent piece of work in its own right.

It is important to recognise that the exception will not automatically apply to all information that can be linked to material that is still in the course of completion. If the information is a separate, independent, and complete piece of work in its own right, the information will not fall within this limb of the exception.'

The Council's position

24. The Council argued that information withheld on the basis of this exception, namely the results of the Liverpool Road OD and the results of the Survey Phase 1 engagement, relate to and are being used to inform the final approach that it will take for the designs of the scheme, which will be subject to public consultation.

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/#whatisinformation>

The complainant's position

25. The complainant noted that phase 1 had a clear end date, ie April 2023, and that the Council then made a series of proposals based on the information received during the first round of engagement. These proposals continue to be available in the public domain and were the focus of the second phase of engagement (September/October 2023). The complainant also noted in the information disclosed to her one of the key requests from officers was 'to share engagement details with networks'. She argued that this negated the Council's argument about the importance of withholding information because the scheme is ongoing. The complainant therefore argued that information relating to phase 1 of consultation is 'complete in itself' and 'separate and independent' from the schemes the Council is currently working on. In her view each phase of the consultation is a separate entity and should be considered as such. Consequently, in her view the material from phase 1 of the engagement process is therefore completed.

The Commissioner's position

26. The Commissioner acknowledges the complainant's point that phase 1 had a clear end date, and indeed that some information collected by the Council as part of that phase has now been disclosed. However, the Commissioner accepts the Council's position that the specific information that has been withheld on the basis of this exception is being used to inform the final approach that will be subject to public consultation. Whilst the Commissioner considers that the Council could have been more specific in identifying the 'material' that is incomplete, the Commissioner accepts that the clear implication is that these are the designs and plans in respect of final approach. On this basis the Commissioner accepts that the withheld information 'relates to' information which is still in the course of completion.

Public interest test

27. Regulation 12(1)(b) requires that, where the exception under regulation 12(4)(d) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.
28. Furthermore, regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

Public interest in favour of maintaining the exception

29. The Council explained that it is mindful that there is considerable public interest in the low traffic neighbourhood (LTN) schemes which has generated a significant number of queries. It noted that it endeavours to

be transparent about these schemes by proactively publishing information and responding to requests for information. Despite this, it explained that some information has been misrepresented and/or weaponised by local campaign groups via factually incorrect information published to campaign websites. The Council explained it then has to ensure that this misinformation is corrected. Consequently, the Council argued that it is important to publish the OD survey and the phase 1 and 2 engagement results in the context of other documents such as the engagement report, traffic analysis and contextual analysis documents to provide a full picture of the project background and purpose. The Council argued that publishing this data outside of this context will both harm the ongoing planning and create a risk that it is misinterpreted and used to misinform residents.

30. In the Council's view, given the ongoing work on this scheme and the need to ensure that published information is accurate, the Council believes that the public interest in maintaining this exception outweighs that of disclosure at this time.

Public interest in disclosure of the information

31. The Council acknowledged that since the launch of LTN schemes, there has been considerable public interest, both positive and negative. The Council explained that it recognises the need to be transparent to contribute to public understanding of the scheme and ensure accountability over decision making.
32. With reference to the point made above regarding the findings being shared with particular networks, the complainant noted that she was unclear whether this information had been shared with the specific networks, but argued that if it had it was concerning that they had access to this material but residents had not. She also argued that it was pointless to embark on an engagement process with residents and businesses if the Council is then not prepared to share the various viewpoints raised in the course of engagement. Moreover, in line with the reasons set out above at paragraph 25 in her view the information could be disclosed without any impact or harm occurring to the Council's ongoing work on the scheme.
33. With regard to the concern about how the information could be used misinterpreted and/or 'weaponised', the complainant suggested that rather than use this as a reason not to disclose the information the Council should take this up with the parties in question. In any event, she argued that it is difficult to conceive how an OD survey could be misrepresented since this is independent and factual. Furthermore, the complainant argued that if the Council believes that the above is the case then proposals should not have been published which were reliant

on feedback from an engagement process but without any traffic or contextual analysis to support the proposals.

Balance of the public interest test

34. With regard to the Council's concerns that the data could be misinterpreted or misrepresented, in general the Commissioner considers that such arguments should not be given any weight as it is usually possible to place information in to context. The argument would only carry some weight if the information would create a misleading or inaccurate impression and there were particular circumstances that would mean it would be difficult or require a disproportionate effort to correct this impression or provide an explanation. In the circumstances of this case the Commissioner notes that the Council has stated that it has previously taken such steps in relation to LTN schemes, but it has not, in his view, set out why doing so in response to this particularly case would necessarily reach such a threshold. Furthermore, the Commissioner is conscious that the information withheld on the basis of this exception is primarily factual and numerical data, and in his view there would appear to be limited scope of misinterpreting such information, even taking into account the strong views of the local community in respect of the scheme.
35. The Commissioner also appreciates that the Council has also argued that disclosure of this information will harm ongoing planning in relation to the scheme. However, again the Commissioner considers that the Council has not clearly set how disclosure of the information in question would actually result in harm to this process. As a result, the Commissioner would attribute limited weight to the public interest arguments in favour of maintaining the exception.
36. With regard to the public interest in favour of disclosing the information, the Commissioner agrees with both parties that there is public interest in releasing information so that residents are informed about the scheme. Disclosure of the information withheld on the basis of this exception would provide a clearer insight into the data gathered as part of the phase 1 process and could improve the public's understanding around this aspect of the engagement process. The information itself is arguably limited in scope, in comparison to the information that has now been disclosed, but it would nevertheless provide specific and detailed factual and numerical information that has not previously been released. Such information would therefore provide the public with an understanding that goes beyond the headline figures disclosed from the phase 1 engagement process.
37. Taking the above into account, the Commissioner is not persuaded that there is a significant or weighty public interest in the maintaining the particular information that has been withheld on the basis of regulation

12(4)(d). In contrast, he accepts that disclosure of such information could add further to the public's understanding of the data gathered by the Council at that stage of the engagement process, and that such further transparency attracts weight. Therefore the Commissioner finds that the public interest favours disclosure of this information.

Regulation 12(4)(e) – internal communications

38. Regulation 12(4)(e) provides that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It is also a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.
39. The Council explained that it meets with Councillors to discuss LTN schemes so that Councillors are kept apprised of developments of scheme and the information withheld on the basis of regulation 12(4)(e) consisted of parts of minutes of such meetings. The Commissioner has examined the information and is satisfied that it consists of a record of discussions between officers and Councillors and that this therefore falls within the scope of this exception.

Public interest test

Public interest in favour of maintaining the exception

40. The Council explained that the meetings in question provide a space for matters to be discussed freely and explore the potential options as well as providing progress updates. The Council argued that it is essential that confidentiality is maintained at key points to ensure operational efficiency and ensure that decisions are made effectively. The Council emphasised that such free and frank exchanges ensure that it is able to explore all options without external influence or distraction. The Council also emphasised that at this time the scheme remains an active matter and final decisions have not yet been reached and therefore this internal deliberation needs to remain protected.

Public interest in favour of disclosing the information

41. As noted above, the Council recognised that the public interest in all LTN schemes and that releasing information allows residents to contribute to Council decision making processes and supports a better understanding of matters.
42. The complainant argued that the Council is able to have free and frank exchanges and explore options without recording these discussions. She argued however that this did not preclude providing evidence for decisions which have been made and the thinking behind any such

decisions should be available as part of a transparent approach to governance.

43. She therefore argued that the Council has a duty to provide the evidence which led to the proposals put forward for consultation in the second phase of engagement.

Balance of the public interest

44. With regard to attributing weight to the public interest arguments in favour of maintaining the exception, the Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. The safe space arguments may carry significant weight in some cases. In particular, the Commissioner considers that the need for a safe space will be strongest when the issue is still live.
45. In the circumstances of this case the Commissioner accepts that at the time of the request the Council's planning in respect of the scheme in question was clearly ongoing. Furthermore he accepts the Council's position that the particular information that has been redacted from the minutes concerns information which, although recorded in the context of the phase 1 engagement, still concerns aspects of the project that are not yet finalised. The Commissioner is also conscious that the material withheld on the basis of this exception contains a mix of personal views and open internal discussion about a complex and contentious scheme. In light of the above, in the Commissioner's view, significant weight should be attributed to the safe space arguments in this particular case.
46. The Commissioner notes the complainant's point that the Council could have free and frank internal discussions, but these need not be recorded (and thus not disclosable under EIR). However, in the Commissioner's view it would be against the public interest if Council altered its approach to record keeping of minutes in order to avoid recording particularly free and frank discussions.
47. With regard the public interest arguments in favour of disclosure, as set out above the Commissioner accepts that there is strong public interest in the disclosure of information which would add to the public's understanding of the Council's decision making in relation to the scheme. However, the Commissioner is not persuaded that disclosure of the limited information that has been redacted on the basis of this exception would prove to be that informative, certainly not compared to the survey data withheld on the basis of regulation 12(4)(d) which he has ordered the disclosure of. Furthermore, with regard to transparency surrounding the Council's internal discussions, the Commissioner observes that the Council has disclosed the vast majority of the minutes

that it holds; the redactions made on the basis this exception are minimal.

48. Taking the above into account the Commissioner has therefore determined that the public interest favours maintaining the exception contained at regulation 12(4)(e).

Right of appeal

49. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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